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7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA

9 DIMITRI DIXON, individually, and on behalf of
10 all others similarly situated,

11 Plaintiff,

12 vs.

13 CUSHMAN & WAKEFIELD, INC.,

14 Defendant.

Case No.

COLLECTIVE ACTION COMPLAINT

1. Violations of the Fair Labor Standards Act

JURY TRIAL DEMANDED

1 Plaintiff Dimitri Dixon (“Plaintiff”), individually and on behalf of all others similarly situated,
2 alleges as follows:

3 INTRODUCTION

4 1. Plaintiff Dimitri Dixon brings this action individually, and in a representative capacity
5 on behalf of all other similarly situated individuals (“Collective Action Members”), against Defendant
6 Cushman and Wakefield, Inc. (hereinafter “C&W”) for violations of the Fair Labor Standards Act
7 (“FLSA”), 29 U.S.C. §§ 201 *et seq.*

8 2. Plaintiff began working for Defendant as an appraiser in 2007 – thirteen (13) years
9 preceding the filing of this action. She and other Appraisers throughout the country (including
10 Trainees, Appraisers, and Senior Appraisers) have been denied the benefits and protections required by
11 the FLSA.

12 3. Plaintiff alleges that Defendant **failed to:**

- 13 a. Properly classify Appraisers as non-exempt under the FLSA;
- 14 b. Pay Plaintiff and Collective Action Members all overtime wages for hours
15 worked in excess of forty (40) hours a week.

16 JURISDICTION AND VENUE

17 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

18 5. This Court also has jurisdiction over Plaintiff’s claims under the FLSA pursuant to 29
19 U.S.C. § 216(b).

20 6. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391
21 because Defendant is a joint employer with its wholly owned subsidiary Cushman and Wakefield
22 Western, Inc. (which Plaintiff has sued in Case No. 3:18-cv-05813-JSC), which has a registered
23 address with the California Secretary of State (425 Market Street, Suite 2300, San Francisco, CA
24 94105). Together, they employ Collective Action Members within this district. C&W also owns
25 related entities in states across the country that, along with C&W, also employ Appraisers like Plaintiff
26 Dixon and Collective Action Members throughout the country.

PARTIES

7. Plaintiff Dimitri Dixon is an adult individual who resides in Tustin, CA. She brings this action individually and on behalf of all others similarly situated in the United States. Plaintiff was employed as an Appraiser Trainee¹ by C&W and worked in that capacity from September 2007 to December 10, 2018.

8. Defendant is a commercial real estate services company. Upon information and belief, C&W offers investment and asset management, project and development, and valuation and advisory services, among other services. C&W is the parent corporation of C&W Western, Inc, and related corporate entities in states across the country and together they also employ Appraisers like Plaintiff. Upon information and belief, these entities have offices throughout the country, including in Georgia, New York, Ohio, Illinois, Washington D.C., and Washington state, as well as non-U.S. offices in locations such as London and Singapore.

FACTUAL ALLEGATIONS

9. Defendant controls the internal affairs and daily operations of its affiliates, including C&W Western. Defendant sets guidelines and procedures for generating appraisals and provides Defendant's software for generating appraisals. *Dixon v. Cushman & Wakefield Western, Inc*, Case No. 3:18-cv-05813-JSC, ECF No. 69 at 8; ECF No. 48 at 9; ECF No. 51 Ex. 20. Appraisers nationwide are subject to the same company policy misclassifying appraisers as exempt from overtime. *Dixon v. Cushman & Wakefield Western, Inc.*, Case No. 3:18-cv-05813-JSC, ECF No. 69 at 9; *Seltz v. Cushman & Wakefield, Inc.*, No. 1:18-cv-02092-BAH (D.C.C. Nov. 25, 2019) (ECF No. 32).

10. Upon information and belief, all compensation plans and promissory notes show that Defendant is in control of appraisers' rate and method of payment. *Dixon v. Cushman & Wakefield Western, Inc.*, Case No. 3:18-cv-05813-JSC, ECF No. 69 at 8; ECF No. 51, Exs. 10, 16, 21, 28; ECF No. 66, Exs. 1, 2, 3. Defendant has set templates for the different compensation plans. ECF No. 69 at 8. Any changes to promissory notes and recoverable draws needed to be approved by Defendant. ECF No. 69 at 8.

¹ Ms. Dixon's official job title was "Associate Director," though she is referred to and identified as an "Appraiser Trainee" at all relevant times.

1 11. Wage statements for appraisers at Defendant's subsidiaries, including in California,
2 Washington, Ohio, and Georgia, list Defendant's New York address and follow a nearly uniform
3 format. *Dixon v. Cushman & Wakefield Western, Inc.*, Case No. 3:18-cv-05813-JSC, ECF No. 57-1;
4 ECF No. 69 at 8.

5 12. Appraisers nationwide used Defendant's online resources and computer programs to
6 generate appraisal reports and were required to follow guidelines and procedures set forth by
7 Defendant. *Dixon v. Cushman & Wakefield Western, Inc.*, Case No. 3:18-cv-05813-JSC, ECF No. 69
8 at 8; ECF No.48 at 9; ECF No. 51 Ex. 20. Across subsidiaries, Defendant controlled employees' work
9 conditions.

10 13. Upon information and belief, Defendant's Executive Management team are also
11 Executives for Defendant's subsidiaries. *Dixon v. Cushman & Wakefield Western, Inc.*, Case No.
12 3:18-cv-05813-JSC, ECF No. 54 at 2. Plaintiff was an employee of C&W, a commercial real estate
13 services company. Plaintiff began working as an Appraiser Trainee on September 17, 2007. As an
14 Appraiser Trainee, Plaintiff's duties included appraising the value of real estate investments,
15 researching property sales, listings, and rentals, helping gather information for the constructing of
16 financial models, researching financial information, preparing appraisals for firm clients, and
17 inspecting property.

18 14. Plaintiff worked across several practice areas within C&W's Valuation Advisory
19 Group, and began working as an Appraiser Trainee in the Senior Housing practice area, supervised by
20 Ryan McCafferty. Upon information and belief, around June 2013, Plaintiff transferred to the Auto
21 Specialty practice area, supervised by Chris Kelsey. Plaintiff most recently worked within C&W's
22 Auto Specialty practice area.

23 15. Throughout her tenure at C&W, Plaintiff actively sought a state-certified appraisal
24 license. Plaintiff held an Appraiser Trainee license. Plaintiff's licensure status affected the number of
25 C&W projects that she could complete.

26 16. Plaintiff was compensated through a "recoverable draw" scheme. Beginning in 2017,
27 Plaintiff was required to sign a standard promissory note with C&W Western, where she agreed to pay
28 C&W Western the balance of a fixed sum of money equal to her annual compensation. Plaintiff's

1 promissory notes are nearly identical to promissory notes for appraisers nation-wide. *Dixon v.*
 2 *Cushman & Wakefield Western, Inc.*, Case No. 3:18-cv-05813-JSC, ECF No. 63 at 8. Each employee
 3 then receives a bi-monthly draw against this obligation, which is the sole basis of compensation. Such
 4 “draw” payments constitute advancements to Plaintiff, which Plaintiff owes to C&W in the form of
 5 debt. The promissory note allows C&W, among other things, to recoup the entire balance of the
 6 advanced sum at any time, including after the employee-employer relationship terminates.

7 17. Plaintiff’s wage statements listed Defendant’s New York address. *Dixon v. Cushman &*
 8 *Wakefield Western, Inc.*, Case No. 3:18-cv-05813-JSC, ECF No. 69 at 8.

9 18. Appraisers work on assigned projects that generate “fees.”² Such “fees” are intended,
 10 in part, to cover their bi-monthly draw payments and satisfy outstanding debt obligations. Employees
 11 earn “fees” through a complicated arrangement, which is stipulated in their employment contracts. A
 12 portion of the “fees” generated by employees – including Plaintiff – are set aside for Defendant, to
 13 account for and offset various accrued expenses and costs, including referral fees, supervisory offsets
 14 and other miscellaneous costs. Upon information and belief, beginning around June 2013, “fees”
 15 earned by Plaintiff for completed projects were significantly reduced due to “supervisory offsets.”

16 19. Upon information and belief, C&W calculates the total “fee” amount generated by
 17 appraisers (minus any deductions made pursuant to the employment contract), as well as the total
 18 amount of draw payments made that period; the draw payments are then deducted from the “fees”
 19 collected. Any positive amount is paid to the employee. Any negative amount is carried forward as
 20 debt owed to C&W, which must be settled by appraisers.

21 20. Plaintiff’s employment contract states that she may not receive less than the draw
 22 payments. The employment contract further states that the draw payments “are loans to be repaid to
 23 C&W upon demand.” The employment contract states that if an appraiser’s “fee” share does not
 24 sufficiently reimburse C&W for their advanced draw payments, employees are personally liable to
 25 C&W.

26 _____
 27 ² Defendant uses the term “fees.” Plaintiff disputes that she and other appraisers are compensated by
 28 “fees” for FLSA purposes. *See Vivar v. Benjamin’s Behavioral Health Servs.*, Case No. H-18-3060,
 2019 U.S. Dist. LEXIS 213979, at *7 (S.D. Tex. Dec. 11, 2019) (FLSA distinguishes between fee
 basis payments and commissions).

1 21. Plaintiff has consistently carried forward a deficit while working for C&W. Plaintiff
2 worked on C&W projects with the goal of settling mounting deficits resulting from the combined draw
3 payments and promissory note obligations.

4 22. In 2017, C&W held a promissory note against Plaintiff for \$54,000, which was equal to
5 the total bi-monthly draw payments received throughout the year.

6 23. Plaintiff repeatedly alerted her supervisors that her deficit was beginning to grow and
7 that the “fee” split with her supervisor precluded Plaintiff from settling the outstanding debt
8 obligations. Plaintiff made two suggestions as ways to settle her obligations: (1) C&W should increase
9 her “fee” share and/or (2) she should be given additional projects to earn more “fees.” Upon
10 information and belief, as of December 2017, Plaintiff was only receiving fifty (50) percent of the total
11 “fees” generated, and otherwise continued receiving fewer and fewer projects.

12 24. Upon information and belief, around December 2017, after Plaintiff discussed her
13 decreasing project volume with Lars Platt, a regional leader at C&W, Mr. Platt informed Plaintiff that
14 there simply was not enough business to accommodate Plaintiff’s request.

15 25. Upon information and belief, around December 2017, Michele Kauffman, a C&W area
16 leader, and another one of Plaintiff’s supervisors, told Plaintiff that she should continue to work on
17 obtaining her appraiser license as a way to position herself for more projects at C&W.

18 26. On May 16, 2018, Plaintiff received an email stating that, effective June 4, 2018,
19 Plaintiff’s recoverable draw compensation would be reduced from \$54,000 to \$45,760, as Plaintiff had
20 not performed enough work to settle the deficit owed to Defendants.

21 27. After a period of receiving few opportunities to conduct appraisals in late 2017 and
22 early 2018, Plaintiff was told that she owed more than \$28,000 to C&W and that Plaintiff needed to
23 figure out a way to reduce that figure.

24 28. Upon information and belief, on or around May 17, 2018, Plaintiff discussed with Ms.
25 Kauffman the low number of projects she was assigned and her growing draw deficit. Ms. Kauffman
26 told Plaintiff that C&W did not have work that she could perform, explaining that only a handful of
27 low-level assignments – with correspondingly lower “fees” – were available. Additionally, Ms.
28

1 Kauffman informed Plaintiff that such low-value assignments were not projects that C&W, as a firm,
2 typically took on.

3 29. Plaintiff's draw payments were stopped effective June 4, 2018.

4 30. Plaintiff's resulting stress, growing deficit, and feeling of helplessness caused Plaintiff
5 severe anxiety, chest pains, and depression. Because of these symptoms, Plaintiff took medical leave.

6 31. On April 15, 2019, Plaintiff was notified of her termination from C&W, effective
7 December 10, 2018. Defendant alleged that Plaintiff owed a draw balance of \$15,632.54 and
8 demanded repayment. Defendant's subsidiaries, including C&W Western, use uniform termination
9 and collection letters. *Dixon v. Cushman & Wakefield Western, Inc.*, Case No. 3:18-cv-05813-JSC,
10 ECF No.63 at 8.

11 32. During the applicable time period, Plaintiff and Collective Action Members regularly
12 and consistently worked more than eight (8) hours in a workday and/or more than forty (40) hours in a
13 workweek. Nonetheless, Defendant failed to pay Plaintiff and Collective Action Members for all
14 hours worked in excess of eight (8) hours in a workday and/or in excess of forty (40) hours in a
15 workweek. *Dixon v. Cushman & Wakefield Western, Inc.*, Case No. 3:18-cv-05813-JSC, ECF No. 49,
16 50, 52, 64;

17 33. Defendant misclassified Plaintiff and Collective Action Members as "exempt"
18 employees.

19 **COLLECTIVE ACTION ALLEGATIONS**

20 34. Plaintiff, on behalf of herself and all Collective Action Members, re-alleges and
21 incorporates by reference the allegations contained in the foregoing paragraphs as if fully set forth
22 herein.

23 35. Pursuant to 29 U.S.C. § 216, Plaintiffs seek to prosecute the FLSA claims as a
24 collective action on behalf of:

25 All persons employed by Cushman & Wakefield, Inc. as Appraisers or
26 Senior Appraisers from July 24, 2016 to the close of the opt-in period, who
27 were not paid an hourly wage, or a guaranteed wage free and clear that did
28 not fluctuate due to the quantity or quality of work.

("Collective Action Members").

1 36. There are numerous similarly situated current and former Appraisers throughout the
2 United States who would benefit from the issuance of a Court-supervised notice. Those similarly
3 situated employees are known to C&W and are readily identifiable through C&W's records.

4 37. Plaintiff and other Collective Action Members are similarly situated because, among
5 other things, they all: (a) had the same duties; (b) performed the same tasks; (c) were misclassified as
6 exempt from overtime wages; (d) were paid under the same employment contracts and promissory
7 notes; (e) were required, suffered, or permitted to work, and did work in excess of forty hours per
8 week; and (f) were not paid at a rate of one and one-half times their regular rate of pay for all overtime
9 hours worked.

10 38. As part of its regular business practice, C&W intentionally, willfully, and repeatedly
11 engaged in a uniform pattern, practice, and/or policy of violating the FLSA with respect to the
12 Collective Action Members. This policy and pattern or practice included, but is not limited to,
13 willfully: misclassifying Appraisers as exempt from overtime wages; failing to pay Appraisers
14 overtime wages for hours that they worked in excess of forty hours per workweek; and failing to
15 record all of the time that Appraisers worked for the benefit of C&W.

16 39. C&W was aware or should have been aware that federal law requires it to pay
17 employees an overtime premium for hours worked in excess of forty hours per workweek.

18 40. C&W's deceptive conduct prevented Plaintiff and all other Collective Action Members
19 from discovering or asserting their claims earlier than they did because C&W, among other things,
20 repeatedly declared that Appraisers were exempt from overtime.

21 **FIRST CAUSE OF ACTION**
22 **Violations of the Fair Labor Standards Act**
 [29 U.S.C. §§ 201 *et seq.*]

23 41. Plaintiff, on behalf of herself and all Collective Action Members, re-alleges and
24 incorporates by reference the allegations contained in the foregoing paragraphs as if fully set forth
25 herein.

26 42. C&W has been, and continues to be, an employer engaged in interstate commerce
27 within the meaning of the FLSA.
28

1 43. C&W employed and/or continues to employ Plaintiffs and each of the Collective Action
2 Members within the meaning of the FLSA.

3 44. C&W has had annual gross revenues in excess of \$500,000.

4 45. Plaintiff expressly consents in writing to be a party to these collective actions pursuant
5 to 29 U.S.C. § 216(b). Plaintiff's written consent to join was previously filed with the Court.

6 46. C&W has a policy and practice of failing to pay Appraisers and Senior Appraisers,
7 including Plaintiff and Collective Action Members, an hourly wage, or a guaranteed wage free and
8 clear that did not fluctuate due to the quantity or quality of work, and thereby misclassifies them.as
9 exempt from overtime wages

10 47. C&W has a policy and practice of refusing to pay any overtime compensation to
11 Appraisers and Senior Appraisers for hours worked in excess of forty hours per week.

12 48. C&W has violated and continues to violate the FLSA, including §§ 207(a)(1) and
13 215(a) because C&W willfully fails to compensate Appraisers and Senior Appraisers, who are not paid
14 an hourly wage, or a guaranteed wage free and clear that did not fluctuate due to the quantity or quality
15 of work, for all hours worked and at a rate not less than one and one-half times their regular rate of pay
16 for work performed in excess of forty hours in a workweek.

17 49. As a result of C&W's misclassification of the above-described Appraisers and Senior
18 Appraisers and its attendant failure to record, report, credit, and/or compensate Plaintiff and Collective
19 Action Members, C&W has failed to make, keep, and preserve records with respect to each of its
20 employees sufficient to determine the wages, hours, and other conditions and practices of employment
21 in violation of the FLSA, including §§ 211(c) and 215(a).

22 50. C&W's conduct, as alleged, constitutes a willful violation of the FLSA within the
23 meaning of the statute, 29 U.S.C. § 255(a).

24 51. Due to C&W's FLSA violations, Plaintiff, on behalf of herself and all Collective Action
25 Members, are entitled to recover from C&W unpaid wages, as well as overtime compensation, an
26 additional amount equal to the unpaid wages and overtime as liquidated damages, reasonable
27 attorneys' fees, and costs pursuant to § 216(b) of the FLSA, as well as further relief as described
28 below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class Members, respectfully requests this Court to grant relief against Defendant as follows:

A. Designate this action as a collective action on behalf of the Collective Action Members and authorize issuance of notice pursuant to 29 U.S.C. § 216(b) to all Collective Action Members, apprising them of the pendency of this action and permitting them to timely assert FLSA claims in this action by filing individual consents to opt into this proceeding;

B. Declare that Defendant misclassified all Collective Action Members under the FLSA as exempt from overtime wages;

C. Award liquidated damages to Plaintiffs and Collective Action Members as a result of C&W's willful failure to pay for all wages due as well as overtime compensation pursuant to the FLSA;

D. Award pre-judgment and post-judgment interest;

E. Award costs and expenses of this action;

F. Award reasonable attorneys' fees; and

G. Award such other relief as this Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury on each and every cause of action so triable.

Dated: October 7, 2020

Respectfully submitted,

GOLDSTEIN, BORGEN, DARDARIAN & HO

/s/ Laura L. Ho

Laura L. Ho

Attorneys for Plaintiff

ATTACHMENT

